

CAROL M. LONGSTAFF
Claimant

CITY OF TOPEKA
Respondent
Self-Insured

The Administrative Law Judge found claimant suffered a series of accidents through November 23, 2001, and that claimant's resulting injuries arose out of and in the course of her employment with respondent. Finding "the true nature of the [c]laimant's permanent impairment lies somewhere between the 0% rating of Dr. Delgado and the 12 % ratings of

Dr[s]. Ketchum and Bieri,” the ALJ found claimant sustained a 6 percent whole person impairment from her bilateral carpal tunnel syndrome.¹

On appeal, claimant argues that the 12 percent whole body impairment ratings given by the treating physician, Dr. Lynn D. Ketchum and the court-ordered independent medical examiner, Dr. Bieri, are more credible than the zero percent impairment rating given by respondent’s expert, Dr. Sergio Delgado. Accordingly, claimant requests the Board find claimant’s impairment of function is 12 percent to the whole body. There is no claim in this case for an award of work disability.

Conversely, respondent argues that claimant’s carpal tunnel syndrome was not caused from her work, but if it is found to have been work-related, that she has no permanent impairment following her treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulation of the parties, and having considered the parties’ briefs and oral arguments, the Board finds that the ALJ’s Award should be modified to reflect a 12 percent permanent partial general disability.

Claimant retired from the City of Topeka on November 23, 2001, after 14 and one-half years of service. Her job duties were essentially the same throughout her employment, that is, general office work including, filing, typing, whole punching, and computer data entry. Although her duties varied, claimant described her duties as “hand intensive” activity. She denied having any hobbies that were hand intensive and denied suffering any hand injuries away from work, although she acknowledged that she enjoyed playing the slot machines at a local casino about twice a week. Claimant first started noticing problems with her hands about March of 2001. She reported her symptoms and was sent by respondent to Dr. Donald T. Mead at St. Francis Hospital in July 2001. Dr. Mead diagnosed bilateral carpal tunnel syndrome. He ordered an EMG test and physical therapy and recommended that claimant wear wrist braces.

Respondent next sent claimant to Dr. Polly, whom she saw on only one occasion on August 27, 2001. Dr. Polly thought claimant’s symptoms were the result of diabetic neuropathy rather than from her work. As a result, respondent discontinued providing claimant’s medical treatment. Following a preliminary hearing on March 20, 2002, the ALJ found claimant’s condition to be work-related and ordered respondent to provide medical treatment. Claimant then came under the care of Dr. Ketchum and ultimately underwent bilateral carpal tunnel release surgeries.

¹Order (March 5, 2004).

Dr. Ketchum first saw claimant on February 5, 2002. Claimant described her symptoms as numbness and tingling in her hands and wrists with pain that wakes her up at night. She also described weakness and problems with gripping, twisting or turning with her hands. She said that her symptoms have been consistent since she stopped working in November 2001. He diagnosed bilateral carpal tunnel syndrome and attributes that condition to claimant's work activities. He performed carpal tunnel release surgeries on both the right and left upper extremities. He last saw claimant on November 19, 2002, at which time he obtained a repeat nerve conduction study and determined she had reached maximum medical improvement. Using the *Guides*,² Dr. Ketchum rated each upper extremity at ten percent which combined to a 12 percent impairment to the whole person. He recommended permanent restrictions of no repetitive use of her hands more than 30 percent of the time.

Richard Polly, M.D., is a board certified orthopedic surgeon. He saw the claimant on August 27, 2001. At that time he was not certain that claimant had carpal tunnel syndrome and suspected she might have peripheral neuropathy from her diabetes. However, he acknowledged that her pattern of numbness and symptoms was not inconsistent with carpal tunnel syndrome. He did review the EMG studies performed by John A. Magnotta, M.D., which showed latency in the median nerve but it was not clear to Dr. Polly whether that neuropathy was from entrapment as opposed to diabetic neuropathy.

Claimant was examined by orthopedic surgeon Sergio Delgado, M.D., on May 21, 2003. Based on an absence of complaints concerning her upper extremities, Dr. Delgado determined that claimant did not have a rateable impairment under the *Guides*. Dr. Delgado acknowledged that the EMG studies showed claimant had a mononeuropathy indicative of carpal tunnel syndrome as opposed to a polyneuropathy which would likely be caused by her diabetes. In his opinion, based upon his review of claimant's medical records and the history he took from claimant, there was no indication that her median nerve entrapment was due to diabetes. As to causation factors, the Dr. Delgado testified as follows:

Q. (Ms. Fisher) Considering that history, do you believe there is a causative relationship between the development of the bilateral carpal tunnel syndrome and Ms. Longstaff's work activities?

. . . .

A. (Dr. Delgado) I would feel that the activities that she performed are a compatible causative factor for production of carpal tunnel syndrome.

²American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

Q. And is it fair to say that you didn't see any outside activities that might cause carpal tunnel syndrome?

A. She did not describe it, she did not describe any other disease processes other than the diabetes that we ruled out as a causative factor based on the EMG results.³

The regular hearing was held before the ALJ on January 8, 2004. Claimant testified that she did receive substantial relief from her bilateral carpal tunnel release surgeries performed by Dr. Ketchum. Claimant said she was no longer experiencing the numbness and tingling but still had weakness in her hands and wrists along with some popping in her thumbs and wrists. When asked why she did not tell Dr. Delgado about her complaints, she answered that initially she thought that she was seeing Dr. Delgado in connection with her back injury, which is the subject of a separate workers compensation claim. That is why she did not put her upper extremity symptoms on the pain diagram that she filled out initially. However, once Dr. Delgado explained the nature of her visit, claimant said she related her upper extremity symptoms to him. She had no explanation for why Dr. Delgado had no record of upper extremity complaints.

The ALJ ordered an independent medical examination and report by Peter V. Bieri, M.D., who is board certified in impairment and disability determination. Dr. Bieri reported that:

The claimant stated that she had some improvement with her surgical interventions, but continued to have pain, numbness and tingling primarily with repetitive gripping and grasping. She no longer has any night symptomatology, nor does she use her splinting at bedtime. Her symptoms are primarily related to activity as described. Symptoms are often accompanied by weakness, particularly with attempts at repetitive use.⁴

Dr. Bieri concluded:

The claimant incurred injury during the course of active employment reported in March of 2001. Such injury occurred as the result of repetitive use of the upper extremities, with a subsequent diagnosis rendered consistent with bilateral carpal tunnel syndrome involving the median nerves. Electrodiagnostic testing was confirmatory. Initial treatment was conservative in nature, unsuccessful, followed by surgical intervention bilaterally. The claimant underwent post-operative

³Delgado Depo. at 14 and 15.

⁴ Peter V. Bieri, M.D., Independent Medical Report at 4 (June 19, 2003).

rehabilitation, and was left with residual symptomatology and findings described above.⁵

Dr. Bieri found claimant to be at maximum medical improvement and rated her condition at 10 percent to each upper extremity for entrapment neuropathy which translates to a six percent whole person impairment to each upper extremity, which combine to a 12 percent whole person impairment. Dr. Bieri attributed all this impairment to her work with respondent. He recommended permanent restrictions to avoid repetitive use of the upper extremities no more than 30 percent of the time including gripping, grasping, handling and fingering.

The Board agrees with Judge Benedict and finds claimant has proven that her carpal tunnel syndrome condition and resulting disability arose out of and in the course of her employment with respondent. In this instance however, the Board finds the 12 percent whole person impairment ratings given by both the treating physician Dr. Ketchum, and the court-ordered independent medical examiner Dr. Bieri, to be more credible than the zero percent impairment rating given by respondent's expert Dr. Delgado.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated March 5, 2004 is modified as follows:

The claimant is entitled to 49.8 weeks of permanent partial disability compensation at the rate of \$334.67 per week or \$16,666.57 for a 12 percent functional impairment disability, making a total award of \$16,666.57.

As of September 1, 2004, there would be due and owing to the claimant permanent partial disability compensation at the rate of \$334.67 per week in the sum of \$16,666.57, which is ordered paid in one lump sum less amounts previously paid.

The Board adopts the remaining orders of the ALJ to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

⁵*Id.* at 4 and 5.

Dated this _____ day of September 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan L. Fisher, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director